

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-004**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

**JACKIE HOLBROOK,
TIMOTHY HOPKINS, ET AL.**

RESPONDENTS

ADMINISTRATIVE ACTION NO. 03-MSRC-005

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

JACKIE HOLBROOK

RESPONDENT

FINAL ORDER

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Jackie Holbrook, and the members of the Commission having reviewed the Settlement Agreement filed on July 7, 2003 in the matters herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Administrative Hearing, scheduled for September 11, 2003 in Administrative Action No. 03-MSRC-005 is **CANCELED**;
3. The Respondent, Jackie Holbrook's Underground Mine Foreman's

Certificate, # A-***-**, issued by the Commonwealth of Kentucky, shall be **REVOKED** for a period of two (2) years, effective July 3, 2003;

4. Respondent Holbrook shall be required to re-take and pass the mine foreman's examination given by the KDMM before re-applying to the Kentucky Mining Board for an underground mine foreman's certificate;

5. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

6. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Holbrook, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);

7. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Jackie Holbrook, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

8. **Appellate rights:** Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of

record in this proceeding.

Entered this _____ day of August 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING JACKIE HOLBROOK was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of August 2003:

JACKIE HOLBROOK

BUSY KY *****

Respondent

And by regular mail, postage pre-paid to:

HON. BILLY R. SHELTON
JONES, WALTERS, TURNER
& SHELTON, PLLC.
151 N. EAGLE CREEK DRIVE
ONE FOUNTAIN PLAZA, STE. 310
LEXINGTON, KY 40509
Counsel for Respondent Hopkins

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL

MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)
)
 Complainant)
)
 v.) Administrative Action No. 03-MSRC-004
)
)
 JACKIE HOLBROOK, TIMOTHY HOPKINS &)
 HAROLD SWINEY)
)
 Respondents)

KENTUCKY DEPT. OF MINES & MINERALS)
)
 Complainant)
)
 v.) Administrative Action No. 03-MSRC-005
)
)
 JACKIE HOLBROOK)
)
 Respondent)

SETTLEMENT AGREEMENT BETWEEN KDMM & JACKIE HOLBROOK

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”) and Jackie Holbrook (“Holbrook”), one of the Respondents in Administrative Action No. 03-MSRC-004 and the sole Respondent in 03-MSRC-005, and hereby state that they have agreed to a settlement of both of the above-styled disciplinary proceedings, according to the following terms:

In consideration for the dismissal of these actions against him and the cancellation of the hearing scheduled for August 14, 2003 (as it pertains to him) in No. 03-MSRC-004, as well as the hearing scheduled for September 11, 2003 in No. 03-MSRC-005, Holbrook admits the following: (1) that he instructed miners under his supervision to move the section power center on March 26-27, 2003, while it was energized, which exposed those miners to an imminent danger of death or serious injury, and he participated in the energized power move himself, as set forth in Complaint No. 03-MSRC-004; (2) that he traveled under unsupported mine roof on or about March 31, 2003, which exposed himself to an imminent danger of death or serious injury, as set forth in Complaint No. 03-MSRC-005; and (3) that he ordered two roof bolting machine operators to travel in by an unsupported right break on or about March 31, 2003, which exposed those miners to an imminent danger of death or serious injury, as set forth in Complaint No. 03-MSRC-005.

In further consideration for the dismissal of both of these actions against him and the cancellation of the scheduled hearings, Holbrook agrees to the **REVOCATION OF HIS UNDERGROUND MINE FOREMAN'S CERTIFICATE (#A-***-**) FOR A PERIOD OF TWO (2) YEARS**, said penalty to be effective upon the signing of this Settlement Agreement by both parties.¹

Holbrook further agrees that if he wants to become a certified underground mine foreman in the Commonwealth of Kentucky after the expiration of the 2-year revocation period, he will have to re-take and pass the Kentucky underground mine foreman's examination prior to re-applying to the Kentucky Mining Board for a foreman's certificate.

¹ Holbrook has already surrendered his underground mine foreman's card to KDMM.

Holbrook also agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission (“the Commission”), will be considered by the Commission to constitute both a “first offense”, as that term is defined at 805 KAR 8:010, Section 1 (5), for the violation admitted in Administrative Action No. 03-MSRC-004; and a “subsequent offense”, as defined at 805 KAR 8:010, Section 1 (13), for the violations admitted in No. 03-MSRC-005.

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Holbrook acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

JACKIE HOLBROOK

Busy, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between KDMM & Jackie Holbrook was mailed this 7th day of July, 2003, to: Jackie Holbrook, ***** , Busy, Kentucky *****; Billy R. Shelton, Attorney-at-Law, JONES, WALTERS, TURNER & SHELTON, 151 N. Eagle Creek Drive, One Fountain Plaza, Suite 310, Lexington, Kentucky 40509; and Harold Swiney, ***** , Draffin, Kentucky *****.

TONY OPPEGARD
General Counsel
KENTUCKY DEPT. OF MINES & MINERALS